

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
HONORABLE A. BRUCE CAMPBELL

In re:)
ANTHONY TYRONE RENTIE) Case No. 10-18997 ABC
FABIENNE LYDIA RENTIE) Chapter 13
Debtors.)

ORDER DENYING MOTION TO MODIFY CONFIRMED CHAPTER 13 PLAN

Before the Court is the Debtors' Second Motion to Modify Chapter 13 Plan, Post Confirmation at Docket #60 ("Motion") and Second Modified Chapter 13 Plan at Docket #59 ("Proposed Modified Plan"). Debtors intend to surrender the real property that is their residence to the holder of the first deed of trust and a homeowner's association. In addition, Debtors propose to surrender to the purchase money lender a motor vehicle which was subject to the "hanging paragraph" of section 1325(a).¹

The proposed modified plan provides:

Property being surrendered: The debtor surrenders the following property securing an allowed secured claim to the holder of such claim:

Thereafter, Debtors list "American Home Mtg Svci" and "Southwind And Eastpointe." The property to be surrendered to those secured creditors is identified as the "House located at 12911 E. Cornell Ave., Aurora, and the date Debtors state as the anticipated date for such surrender is April 01, 2013. In addition, Debtors identify "Dt Credit Co" as the creditor to whom they intend to surrender a 2006 Buick LaCrosse, also on April 01, 2013.

The next paragraph of the Proposed Modified Plan provides:

Relief from the automatic stay to permit enforcement of the liens encumbering surrendered property shall be deemed granted by the Court at the time of confirmation of this Plan. With respect to property surrendered, no distribution on the creditor's claim shall be made unless that creditor files a proof of claim or an amended proof of claim to take into account the surrender of the property.²

¹With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress amended section 1325(a) to include a paragraph which is intended to protect secured lenders who provide debtors with purchase money for motor vehicles or "any other thing of value." If a motor vehicle has been purchased within 910 days preceding the filing of the petition, the claim of that purchase money lender cannot be bifurcated into a secured and unsecured claim based upon the value of the vehicle at the time of confirmation. The paragraph has been referred to by courts and commentators as the "hanging paragraph" because it is not included as a subsection to section 1325(a)(5) which it modifies, but rather is added as an unnumbered paragraph at the end of section 1325(a) following section 1325(a)(9). See e.g. *In re Ballard*, 526 F.3d 634, 637-638 (10th Cir. 2008); 8 *Collier on Bankruptcy* ¶1325.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.); Robin Miller, *Effect of "Hanging" or "Anti-Cramdown" Paragraph Added to 11 U.S.C.A. §1325(a) by BAPCPA*, 19 A.L.R.. Fed. 2d 157 §1 (2007).

² This language is standard in this Court's L.B.Form 3015-1.1, Chapter 13 Plan. It is the form used by debtors pre-confirmation when filing their original and any amended plans. Although not required, it is the form used by debtors for modified plans. Some of the language used therein, however, may not be applicable in the context of post confirmation modifications.

Debtors' confirmed plan did not modify the rights of any of their secured creditors. Debtors paid "American Home Mtg Svci" ("AHMS") and "Dt Credit Co" ("DCC") directly in accordance with the terms of the original notes and security documents. Because of section 1322(b)(2) and the hanging paragraph of section 1325(a), respectively, the claims of AHMS or DCC could be not bifurcated. Thus, there was no need to seek a determination of the value of either the real property or the motor vehicle.

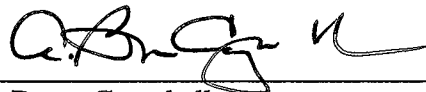
Recently, this Court entered an order denying a motion to modify a confirmed plan. *In re Knapp*, 08-24134 ABC at Docket #51 (Bankr. D. Colo. July 5, 2013). In *Knapp*, the debtors sought to modify a confirmed plan to surrender their residence to the first mortgage holder whom they paid directly in accordance with the terms of the note. This Court held that the Knapps were bound to the provisions of their confirmed plan by section 1327 of the Code, that section 1329 would not permit a modification of a confirmed plan which seeks to bifurcate a previously unmodified secured claim, and that section 1328 prevented the discharge of any debt provided for by section 1322(b)(5) as was the case with the first mortgage holder's debt. As to AHMS, the analysis and reasoning employed and conclusions reached in the *Knapp* case apply to this case and need not be repeated here.

As to the claim of DCC secured by Debtors' motor vehicle, the ultimate conclusion must be the same. A debtor who elects to retain a vehicle which is subject to the "hanging paragraph" of section 1325(a) and confirms a plan incorporating that election and then pays the creditor directly in accordance with the original note and security documents, is bound to that plan. Section 1329 does not permit a reclassification or a post confirmation valuation and bifurcation of that claim.³ Thus, upon the rationale of *Knapp*, this Court cannot approve the Debtors' modified plan as proposed. Accordingly and for the reasons stated therein, it is

ORDERED that Debtor's Motion is DENIED.

DATED: August 8, 2013

BY THE COURT:



A. Bruce Campbell
United States Bankruptcy Judge

³ In an opinion dealing with a debtor's *pre confirmation* effort to surrender a vehicle subject to the "hanging paragraph," in total satisfaction of the creditor's claim, the Tenth Circuit held that the creditor was entitled to an unsecured claim for any deficiency after liquidation of the vehicle on surrender. *In re Ballard*, 526 F.3d 634 (10th Cir. 2008). Once a debtor elects to retain that vehicle and obtains confirmation of a plan which treats the creditor secured by the retained vehicle as fully secured, the creditor remains entitled to the protections afforded it by the "hanging paragraph," and section 1327.